

February 12, 2003

Chairman Michael Powell
Commissioner Kevin Martin
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Jonathan Adelstein
445 12th Street SW, Portals II Building
Washington, D.C. 20544

RE: Notice of Written Ex Parte Comment – Two Originals filed in the proceeding captioned: In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147 Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001).

(Filed Electronically)

I have appreciated the willingness of the FCC Commissioners and staff to enter into dialogues with those of us at state commissions. There has been much progress toward defining a reasonable level of state involvement in decisions about UNEs. Below is a summary of my viewpoint as to what UNE policy should look like.

What will work? A decision with as little ambiguity as possible, with fairness and parity for all parties and an appropriate state role that complements the FCC. The Qwest proposal (1/30/03) offers many aspects worth consideration.

- The FCC must adopt a clear and granular "necessary and impair" standard against which to measure whether a UNE should be on the list.
- Bright line standards which support addition or deletion of a UNE are essential. NARUC and Qwest, among others, have proposed a number of them. Qwest's may have been too simple. Worldcom's proposal is too complex to be administered expeditiously and fairly.
- A rebuttable presumption that some UNEs are on or off the list removes uncertainty.
- The states should conduct contested proceedings subject to judicial review only where interpretation of economic and operational impairment is required.
- An appropriate transition should be designed.

The Oregon Commission has signed the NARUC letter, but there is more than one approach to meeting the goals. The states are not of a mind. NARUC has made a valiant effort to pull a proposal together reflecting core principles. Its proposal falls apart on the uncertainty of standards and process. It errs in assigning granular analysis to the states alone and assuming total jurisdiction over the UNE list.

If we become tangled in process, no carrier will want to invest until the new regulatory uncertainties are worked out of the system. Therefore, I hope the state role is meaningful, useful and appropriate. I encourage my FCC colleagues to look at the big picture, find common ground, and proceed.

A handwritten signature in black ink, appearing to read "Smith", with a light grey rectangular background behind it.

Joan H. Smith
Commissioner
Oregon Public Utility Commission

cc: The Honorable Roy Hemmingway
 The Honorable Lee Beyer
 The Honorable Dave Svanda
 The Honorable Bob Nelson